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Attorneys for Defendant Volkswagen Group of America, Inc. d/b/a Audi of America, Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ALLISON AUTOMOTIVE GROUP, INC., A Nevada Corporation, Plaintiff, v. VOLKSWAGEN GROUP OF AMERICA, INC. DBA AUDI OF AMERICA, INC., and ROE BUSINESS ENTITIES I through V Defendants.	Case No. 3:11-cv-00288

DEFENDANT VOLKSWAGEN GROUP OF AMERICA, INC. DBA AUDI OF AMERICA, INC.'S NOTICE OF REMOVAL

TO: THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

PLEASE TAKE NOTICE that Defendant Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc., a New Jersey corporation, named in the complaint as Volkswagen of America, Inc., d/b/a Audi of America, Inc. ("Audi"), by and through its counsel, pursuant to 28 U.S.C. §§ 1441 and 1446, hereby removes this action from the Second Judicial District Court of the State of Nevada in and for the County of Washoe ("Nevada State Court"), to the United States District Court for the District of Nevada. As set forth below, the United States District Court for the District of Nevada has jurisdiction over this case pursuant to 28 U.S.C. § 1332(a)(1) because the action is between citizens of different states and the matter in controversy exceeds the sum of $75,000, exclusive of interest and costs, and Defendants have complied with the procedural prerequisites of 28 U.S.C. §§ 1441-46.

1. On or about March 31, 2011, plaintiff Allison Automotive Group, Inc., a Nevada corporation ("Allison" or "Plaintiff"), filed a Complaint against Audi and Roe Business Entities I through V ("Roe Entities") in the above-captioned matter in the Nevada State Court as Case No. CV11-00975 (the "State Court Action"). (*See* Declaration of Mike Cagle ("Cagle Decl.") Ex. A (State Court Complaint ("Cmplt.")). The Complaint alleges that Audi improperly interfered with Allison's attempts to sell its automobile dealership.

THE ACTION IS BETWEEN CITIZENS OF DIFFERENT STATES

2. In this action, the Plaintiff is a citizen of Nevada, and the sole named Defendant is a citizen of New Jersey and Virginia. It is thus an action "between citizens of different States." 28 U.S.C. § 1332(a)(1).

3. For purposes of diversity jurisdiction, a corporate party is deemed a citizen of its state of incorporation and the state of its principal place of business. *Breitman v. May Co. Cal.*, 37 F.3d 562, 564 (9th Cir. 1994). The Complaint states that Plaintiff is, and was as of the commencement of the State Court Action, a corporation organized under the laws of the State of Nevada, with its principal place of business in Reno, Nevada. (Cmplt. ¶ 2.). Thus, Plaintiff is a citizen of Nevada.

4. Audi of America, Inc. is an unincorporated operating unit of Volkswagen Group of America, Inc. ("VWGoA"). (Cagle Decl.) ¶ 4)). VWGoA is a corporation organized under the laws of the State of New Jersey. (*Id.*) VWGoA's corporate headquarters are located in Virginia, and its administrative and executive functions are performed in that state. (*Id.*). Its business operations are conducted in numerous states and are not concentrated in one particular state. (*Id.*). As a result, its principal place of business, using the "nerve center test," is the state in which its executive and administrative functions are performed, Virginia. *Breitman*, 37 F.3d at 564. Thus, Audi is, and was as of the commencement of the State Court Action, a citizen of New Jersey and Virginia.

5. The Complaint makes no allegations whatsoever about the Roe Entities. Thus, in determining the existence of complete diversity and the propriety of removal, the joinder of the Roe Entities as defendants in this matter should be disregarded by this Court because they are wholly fictitious. 28 U.S.C. §1441(a) ("For purposes of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded."); *accord Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 690 (9th Cir. 1998) ("[T]he district court was correct in only considering the domicile of the named defendants.").

THE MATTER IN CONTROVERSY EXCEEDS $75,000

6. The "matter in controversy" in this action "exceeds the sum or value of $75,000, exclusive of interest and costs." 28 U.S.C. § 1332(a).

7. "The amount in controversy is simply an estimate of the total amount in dispute, not a prospective assessment of defendant's liability." *Lewis v. Verizon Commc'ns, Inc.*, 627 F.3d 395, 400 (9th Cir. 2010). Where, as here, a plaintiff has not pleaded any specific amount of damages suffered, the defendant bears the burden of proving, by a preponderance of the evidence, that the amount in controversy exceeds $75,000. *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 403 (9th Cir. 1996).

8. Plaintiff first alleges that Audi violated Section 482.36371 of the Nevada Revised Statutes (the "NRS") through its unreasonable refusal to consent to the transfer and sale of the Plaintiff's dealership to two different groups of potential buyers. (Cmplt. ¶¶ 21-32, 26-34). Although it does not allege a specific amount of damages, Plaintiff's prayer for relief, pursuant to NRS 482.36423, seeks "three times the pecuniary loss sustained" from Audi's alleged violations of NRS 482.36371. (Cmplt. 6 ¶ 2). As a result of the treble damages provision, Audi need only show that the financial stakes in this action exceed $25,000. *Chabner v. United of Omaha Life Ins. Co.*, 225 F.3d 1042, 1046 n.3 (9th Cir. 2000) (district court authorized to take treble damages into account when determining the amount in controversy).

9. The two deals which Audi allegedly disrupted involved amounts that far exceed this threshold. The Complaint references a letter of intent from Randolph Townsend and Suresh Naidu concerning the purchase of Allison's dealership. (Cmplt. ¶ 18). Under this letter of intent,

the sale price for the assets to be purchased was at least $3,000,000. (Cagle Decl. ¶ 5). The Complaint also references a letter of intent from Brett Coleman. (Cmplt. ¶ 22). Under this letter of intent, a package of assets of the dealership was to be purchased for at least $1,250,000. (Cagle Decl. ¶ 6). These letters demonstrate that the upper limit on Plaintiff's potential recovery exceeds $1,250,000. Where Defendant demonstrates that Plaintiff "seeks recovery from a pot that Defendant has shown could exceed" the statutory minimum, its burden is satisfied. *Lewis v. Verizon Comm'ns, Inc.*, 627 F.3d 395, 401 (9th Cir. 2010).

10. Plaintiff also seeks an injunction permanently preventing Audi from proceeding with termination of its dealer agreement. (Cmplt. 6 ¶ 1 (Prayer for Relief)). In an injunctive action, the "amount in controversy is measured by the value of the object of the litigation." *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir. 2002). The "object" of this equitable claim is, at a minimum, the "goodwill" or "going concern value" of the dealership—its intangible value above and beyond its material assets. If Plaintiff's claim for injunctive relief is denied and Audi proceeds to terminate its dealership, Plaintiff will lose the entirety of this goodwill value: without the right to sell Audi vehicles, plaintiff's Audi dealership is worth nothing more than the market value of its assets.

11. In addition to the letters of intent discussed above, Plaintiff informed Audi that it received five other offers to purchase its dealership. (Cagle Decl. ¶ 7). Each of these offers valued the "goodwill" of the dealership at an amount in excess of $75,000. (*Id.*). Accordingly, Plaintiff's demand for an injunction also satisfies the amount in controversy requirement.

THE NOTICE OF REMOVAL IS TIMELY AND OTHERWISE PROPER

12. Service of the Summons and Complaint was effected on Audi on April 15, 2011, when Audi appeared and filed a waiver of service in the State Court Action. (*See* Cagle Decl. ¶ 3 & Ex. B (Waiver of Service)); Nev. R. Civ. P. 4(f) ("A voluntary appearance of the defendant shall be equivalent to personal service of process upon that defendant in this State."). This Notice of Removal is thus timely because it is filed within thirty (30) days of April 15, 2011, the date on which Audi had "receipt" of the Summons and the Complaint. 28 U.S.C. 1446(b); *see Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347–48 (1999) ("[N]amed defendant's time to remove is triggered by simultaneous service of the summons and complaint, . . . not by mere receipt of the complaint unattended by any formal service.").

13. True and correct copies of all process, pleadings, and orders served on Audi in the State Court Action as of the date of filing this Notice of Removal are attached hereto. (Cagle Decl. ¶ 3 & Ex. A).

14. Audi is filing a true and correct copy of this Notice of Removal with the Clerk of the Second Judicial District Court of the State of Nevada in and for the County of Washoe.

15. Audi is giving written notice of this filing to all named parties.

16. By removing this action, Audi does not waive any defense that may be available to it.

17. No jury demand has been made in the State Court Action

Based on the foregoing, Audi removes the above action now pending in the Second Judicial District Court of the State of Nevada in and for the County of Washoe, to the United States District Court for the District of Nevada.

DATED this 22nd day of April , 2011.

ARMSTRONG TEASDALE, LLP

By: /s/Louis M. Bubala III
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CERTIFICATE OF SERVICE

I certify that I am an employee of Armstrong Teasdale, LLP, and that on this date, pursuant to Fed. R. Civ. P. 5(b), I am serving a true copy of the attached Notice of Removal on the parties set forth below by:

_x_________ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States mail, at Reno Nevada, postage prepaid, following ordinary business practices, addressed as follows:

James W. Puzey, Esq.
SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON
800 S. Meadows Parkway, Suite 800
Reno, Nevada 89521

__x________ Placing an original or true copy thereof in a sealed envelope and causing the same to be personally hand delivered (for filing)

Court Clerk
Second Judicial District Court
75 Court St.
Reno, NV 89501

DATED this 22nd day of April, 2011.

/s/Louis M. Bubala III
LOUIS M. BUBALA III

An employee of Armstrong Teasdale, LLP